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AFSCME LOCAL 101
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10 SAN JOSÉ POLICE OFFICERS
ASSOCIATION,
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12 Plaintiff,
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14 v.
15
16 CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
SAN JOSÉ, and DOES 1-10 inclusive.,
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18 Defendants.
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Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

**PLAINTIFF AFSCME LOCAL 101'S
SEPARATE STATEMENT OF DISPUTED
FACTS IN SUPPORT OF OPPOSITION
TO DEFENDANTS' AND CROSS-
COMPLAINANTS' MOTION FOR
SUMMARY ADJUDICATION**

AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS.

Hearing Date: June 7, 2013
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Hon. Patricia Lucas
Complaint Filed: June 6, 2012
Trial Date: June 17, 2013

CASE NO. 1-12-CV-225926

PLAINTIFF'S OPPOSITION TO DEFS.' SEPARATE STATEMENT OF UNDISPUTED FACTS
ISO DEFS.' AND CROSS-COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION

1 **SEPARATE STATEMENT OF UNDISPUTED FACTS**

2 A. **INTRODUCTION**

3 Plaintiff/Petitioner and Cross-Defendant Local 101 of the American Federation of State,
4 County and Municipal Employees ("AFSCME") submits the following Separate Statement of
5 Disputed Material Facts ("UDFs") in support of its Opposition to Defendants City of San José and
6 Debra Figone in her official capacity (collectively "City") Motion for Summary Adjudication.

7 B. **CITY'S MATERIAL FACTS**

8 1. **Unconstitutional Impairment of Contract, California Constitution Article I, Section 9**
9 AFSCME first cause of action.

10 **Issue No. 1 A: San José Charter §1506-A (Employee Additional Pension Contributions)**

11 There are triable issues of material facts. Therefore, Defendants are not entitled to
12 summary adjudication as a matter of law.

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
15 1. Section 1506-A ("Current Employees") 16 of Measure B states: 17 (a) "Current Employees" means employees 18 of the City of San José as of the 19 effective date of this Act and who are 20 not covered under the Tier 2 Plan 21 (Section 8). 22 (b) Unless they voluntarily opt in to the 23 Voluntary Election Program ("VEP," 24 described herein), Current Employees 25 shall have their compensation adjusted 26 through additional retirement 27 contributions in increments of 4% of 28 pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition	Undisputed

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p>	<p>Undisputed</p>

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing). In relevant part, the section read:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	<p>Proposition A").</p> <p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter)
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or</i></p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system</i></p>

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	<p>or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Undisputed (although this is not the entirety of Section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p>	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSMCE's case, the City Council only amended the Municipal Code by way of ordinance to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶17, 18, Exhs. 3-6. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh, 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶28, Exh, 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh, 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Personnel (CAMP)</p> <ul style="list-style-type: none"> International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> Effective September 18, 2011, CEO members realized a 12.16% wage reduction Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C, (Municipal Code, 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN, Exh. F

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Chapter 3.28).</p>	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).) Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. D, (Municipal Code, Chapter 3.36). 	<p>Objection: relevance and undue prejudice Objections to Evidence 24</p>

1 Issue No. I-B: San José Charter §1512-A (Employee Retiree Healthcare

2 Contributions)

3 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
4 adjudication as a matter of law.

5 Moving Party's Undisputed Material	Opposing Party's Response and
6 Facts and Supporting Evidence	Supporting Evidence
7 23. San José Charter Section 1512-A states: 8 "Existing and new employees must 9 contribute a minimum of 50% of the cost 10 of retiree healthcare, including both 11 normal cost and unfunded liabilities." 12 13 <u>Supporting Evidence:</u> 14 • RJN, Exh. B.	Undisputed Note: this section was added by Measure B
15 24. On or around April 12, 1960, the voters 16 ratified Proposition A, which amended 17 the San José Charter to include Section 18 78b. 19 20 <u>Supporting Evidence:</u> 21 • RJN, Exh. E (California 22 Assembly Concurrent 23 Resolution No. 17, adopted in 24 Assembly January 18, 1961, 25 approving amendment of 26 Charter of San José to include 27 Section 78b ("Discretionary 28 Powers of Council Respecting Retirement") of Article X).	Undisputed
25 25. Former San José Charter Section 78b 26 stated: 27 "Anything in Section 78a of the Charter 28 to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance,	Disputed as incomplete (material terms missing): "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p>	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<ul style="list-style-type: none"> Gurza Dec., Exhs. 54 Allen Dec., ¶21
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>financial situation of the City. At the time, AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association.</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

Issue No. I-C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. B.	Undisputed
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
<p>44. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter</p>	Disputed as incomplete (material terms missing):

<p>Moving Party's Undisputed Material Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	<p>Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council</i></p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Emphasis added.) <u>Supporting Evidence:</u> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only enacted the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 54

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 (Federated, Police and Fire</p> <p>4 Ordinances).</p>	<p>• Allen Dec., ¶21</p>
<p>5 52. For the Federated Retirement System,</p> <p>6 the Municipal Code provided in Section</p> <p>7 3.28.340(E): "Upon the request of the</p> <p>8 city council or on its own motion, the</p> <p>9 board may make recommendations to</p> <p>10 the city council regarding distribution, if</p> <p>11 any, of the supplemental retiree benefit</p> <p>12 reserve" to retirees and their survivors.</p> <p>Further, "[t]he city council, after</p> <p>consideration of the recommendation of</p> <p>the board, shall determine the</p> <p>distribution, if any, of the supplemental</p> <p>benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <p>• RJN, Exh. C.</p>	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its</p> <p>own motion, the board may make</p> <p>recommendations to the city council</p> <p>regarding the distribution, if any, of the</p> <p>supplemental retiree benefit reserve to</p> <p>retired members, <i>survivors of members, and</i></p> <p><i>survivors of retired members.</i> The city</p> <p>council, after consideration of the</p> <p>recommendation of the board, shall</p> <p>determine the distribution, if any, of the</p> <p>supplemental benefit reserve to said</p> <p>persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <p>• City's RJN, Exh. C.</p>
<p>19 53. Beginning in 2010, City Council</p> <p>20 resolutions suspended distribution of</p> <p>21 SRBR funds from the Federated</p> <p>22 retirement plan for the fiscal years 2010-</p> <p>23 2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <p>• RJN., Exhs. L, M, N</p>	<p>Disputed: cited sources only demonstrate</p> <p>suspended distributions in fiscal years 2010-</p> <p>2011 (City RJN, Exh. L) and 2012-2013</p> <p>(City RJN, Exh. M)</p>
<p>25 54. For the Police and Fire Retirement</p> <p>26 System, Municipal Code §3.36.580(D)(5)</p> <p>27 stated: "Upon the approval of the</p> <p>28 methodology by the City Council, the</p> <p>Board shall make distributions in</p> <p>accordance with such methodology"</p>	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement 	<p>Undisputed as to Federated City Employees' Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]</p>	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>Undisputed as to Federated City Employees' Retirement System</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

1 2. Unconstitutional Taking Of Private Property, California Constitution Article
2 19, Section 9

3 AFSCME third cause of action

4 Issue 2A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There are triable issues of material facts. Therefore, Defendants are not entitled to
6 summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>7 1. Section 1506-A ("Current Employees") of Measure B states:</p> <p>8</p> <p>9 (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>10</p> <p>11</p> <p>12</p> <p>13 (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28 (d) The compensation adjustment through additional employee contributions for</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing):</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES</p>	<p>Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says:</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or</p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><u>Supporting Evidence:</u></p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of any such retirement system or systems.</i> However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	<p>sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Undisputed (although this is not the entirety of section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>10. The City Council has enacted some ordinances implementing Measure B.</p>	<p>Disputed: as is relevant to AFSMCE's case, the City Council only amended the Municipal Code by way of ordinance to remove the SRBR.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction</p>	<p>Objection: relevance and undue prejudice</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>or the City imposed a wage reduction:</p> <ul style="list-style-type: none"> --Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees. <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	<ul style="list-style-type: none"> • Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶28, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pensinn contributions "The parties understand that in order to implement this provision, an amendment must be made in the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>(IBEW)</p> <ul style="list-style-type: none"> • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> • Effective September 18, 2011, CEO members realized a 12.16% wage reduction • Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN, Exh. F
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none">Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue 2B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material 5 Facts and Supporting Evidence	6 Opposing Party's Response and 7 Supporting Evidence
8 23. San José Charter Section 1512-A states: 9 "Existing and new employees must 10 contribute a minimum of 50% of the cost 11 of retiree healthcare, including both 12 normal cost and unfunded liabilities." 13 14 <u>Supporting Evidence:</u> 15 <ul style="list-style-type: none">16 • RJN, Exh. B.	17 Undisputed 18 Note: this section was added by Measure B
19 24. On or around April 12, 1960, the voters 20 ratified Proposition A, which amended 21 the San José Charter to include Section 22 78b. 23 24 <u>Supporting Evidence:</u> 25 <ul style="list-style-type: none">26 • RJN, Exh. E (California 27 Assembly Concurrent 28 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	29 Undisputed
30 25. Former San José Charter Section 78b 31 stated: 32 "Anything in Section 78a of the Charter 33 to the contrary notwithstanding, the 34 Council in its discretion may at any 35 time, or from time to time, by ordinance, 36	37 Disputed as incomplete (material terms missing): 38 39 "Anything in Section 78a of the Charter to 40 the contrary notwithstanding, the Council in 41 its discretion may at any time, or from time 42 to time, by ordinance, amend or otherwise

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment -- Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment -- Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(emphasis added).
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	Undisputed
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p>	<p>Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<ul style="list-style-type: none"> Gurza Dec., Exhs. 54 Allen Dec., ¶20
<p>33. Municipal Code §3.28.385(C) provides:</p> <p>"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides:</p> <p>"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>financial situation of the City. At the time, AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association.</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

Issue 2C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. B.	Undisputed
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
<p>44. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the</p>	<p>Disputed as incomplete (material terms missing):</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."</i></p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any</i></p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 54 Allen Dec., ¶21

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C.
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)] 	<p>Undisputed as to Federated City Employees' Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>Undisputed as to Federated City Employees' Retirement System</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

1 **3. Constitutional Taking Of Private Property Without Due Process, California**
2 **Constitution Article I, Section 7**

3 *AFSCME* fourth cause of action

4 **Issue 3A: *San José* Charter §1506-A (Employee Additional Pension Contributions)**

5 There are triable issues of material facts. Therefore, Defendants are not entitled to
6 summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>10 1. Section 1506-A ("Current Employees") of Measure B states:</p> <p>11 (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>12 (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>13 (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing). In relevant part, the section read:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers</p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems.</i> However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	<p>employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Undisputed (although this is not the entirety of section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>10. The City Council has enacted some</p>	<p>Disputed: as is relevant to AFSMCE's case, the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>City Council only amended the Municipal Code by way of ordinance to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and unduc prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>--Association of Legal Professionals</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>(ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Municipal Code.”</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>(plaintiff in the SJPOA case).</p> <ul style="list-style-type: none"> International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> Effective September 18, 2011, CEO members realized a 12.16% wage reduction Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN, Exh. F
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)</p> <ul style="list-style-type: none">• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue 3B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material 5 Facts and Supporting Evidence	6 Opposing Party's Response and 7 Supporting Evidence
8 23. San José Charter Section 1512-A states: 9 "Existing and new employees must 10 contribute a minimum of 50% of the cost 11 of retiree healthcare, including both 12 normal cost and unfunded liabilities." 13 14 <u>Supporting Evidence:</u> 15 <ul style="list-style-type: none">16 • RJN, Exh. B.	17 Undisputed 18 Note: this section was added by Measure B
19 24. On or around April 12, 1960, the voters 20 ratified Proposition A, which amended 21 the San José Charter to include Section 22 78b. 23 24 <u>Supporting Evidence:</u> 25 <ul style="list-style-type: none">26 • RJN, Exh. E (California 27 Assembly Concurrent 28 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	29 Undisputed
30 25. Former San José Charter Section 78b 31 stated: 32 "Anything in Section 78a of the Charter 33 to the contrary notwithstanding, the 34 Council in its discretion may at any 35 time, or from time to time, by ordinance, 36	37 Disputed as incomplete (material terms missing): 38 "Anything in Section 78a of the Charter to 39 the contrary notwithstanding, the Council in 40 its discretion may at any time, or from time 41 to time, by ordinance, amend or otherwise

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X)
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	Undisputed
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>33. Municipal Code §3.28.385(C) provides:</p> <p>"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides:</p> <p>"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI),</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy financial situation of the City. At the time,</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>--Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

Issue 3C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. B.	Undisputed
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
<p>44. Former San José Charter Section 78b stated:</p>	Disputed as incomplete (material terms missing):

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p data-bbox="370 394 862 940">"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p data-bbox="370 1010 651 1041"><u>Supporting Evidence:</u></p> <ul data-bbox="418 1058 846 1367" style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p data-bbox="964 394 1495 1045">"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p data-bbox="906 1062 1495 1262">(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p data-bbox="906 1283 1133 1314">(Emphasis added.)</p> <p data-bbox="971 1383 1252 1415"><u>Supporting Evidence:</u></p> <ul data-bbox="964 1432 1495 1665" style="list-style-type: none"> • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p data-bbox="310 1688 748 1751">45. The ballot argument in favor of Proposition A stated:</p> <p data-bbox="363 1772 854 1898">"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	<p data-bbox="906 1688 1187 1719">Disputed as incomplete</p> <p data-bbox="906 1787 1458 1850">The ballot argument in favor of Proposition A also says:</p> <p data-bbox="906 1871 1386 1902">"YOUR POLICE AN FIREMEN NEED</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<p>provisions of this Section. (Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	<p>Undisputed</p>
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Undisputed (although this is not the entirety of Section 602)</p>
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p>	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
5 (showing plan overfunded at 114.8% as of June 30, 2001]	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Chciron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	Undisputed as to Federated City Employees' Retirement System
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	Undisputed as to Federated City Employees' Retirement System

1 4. Promissory And Equitable Estoppel

2 AFSCME *eight*h cause of action.

3 Issue 4A: San José Charter §1506-A (Employee Additional Pension Contributions)

4 There is no triable issue as to any material fact and Defendants are entitled to summary
5 adjudication as a matter of law that San José Charter Section 1506-A is not a violation of
6 promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The
7 City Charter may require employees to pay additional pension contributions to defray pension plan
8 unfunded liabilities. The City made no legally binding promise to pay for all pension plan
9 unfunded liabilities.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>12 1. Section 1506-A ("Current Employees") of Measure B states:</p> <p>13 (a) "Current Employees" means employees 14 of the City of San José as of the 15 effective date of this Act and who are 16 not covered under the Tier 2 Plan (Section 8).</p> <p>17 (b) Unless they voluntarily opt in to the 18 Voluntary Election Program ("VEP," 19 described herein), Current Employees 20 shall have their compensation adjusted 21 through additional retirement 22 contributions in increments of 4% of 23 pensionable pay per year, up to a 24 maximum of 16%, but not more than 25 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>26 (c) The starting date for an employee's 27 compensation adjustment under this 28 Section shall be June 23, 2013, regardless of whether the VEP has been</p>	<p>Undisputed</p>

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
2		
3	implemented. If the VEP has not been	
4	implemented or any reason, the	
5	compensation adjustments shall apply to	
6	all Current Employees.	
7	(d) The compensation adjustment through	
8	additional employee contributions for	
9	Current Employees shall be calculated	
10	separately for employees in the Police	
11	and Fire Department Retirement Plan	
12	and employees in the Federated City	
13	Employees' Retirement System.	
14	(e) The compensation adjustment shall be	
15	treated in the same manner as any other	
16	employee contributions. Accordingly,	
17	the voters intend these additional	
18	payments to be made on a pre-tax basis	
19	through payroll deductions pursuant to	
20	applicable Internal Revenue Code	
21	Sections. The additional contributions	
22	shall be subject to withdrawal, return	
23	and redeposit in the same manner as any	
24	other employee contributions.	
25	<u>Supporting Evidence:</u>	
26	<ul style="list-style-type: none"> Defendant's Request for 	
27	Judicial Notice ("RJN"), Exh.	
28	B, pp. 4-5 ("Measure B").	
	2. On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended	
	the San José Charter to include Section	
	78b.	
	<u>Supporting Evidence:</u>	
	<ul style="list-style-type: none"> RJN, Exh. E (California 	
	Assembly Concurrent	
	Resolution No. 17, adopted in	
	Assembly January 18, 1961,	
	approving amendment of	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing). In relevant part, the section read:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen ond firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
5. As adopted by the voters in 1965, the San José City Charter states at Section	Undisputed;

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	<p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter)
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any</i></p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	<p>the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Undisputed (although this is not the entirety of section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p>	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (A.L.P). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh. 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh. 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> • Effective September 18, 2011, CEO members realized a 12.16% wage reduction • Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • R.JN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN, Exh. F

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">RJN, Exh. D, (Municipal Code, Chapter 3.36).	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

1 **Issue 4B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to
3 summary adjudication as a matter of law.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>6 23. San José Charter Section 1512-A states:</p> <p>7 "Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."</p> <p>9 <u>Supporting Evidence:</u></p> <p>11 • RJN, Exh. B.</p>	<p>Undisputed</p> <p>Note: this section was added by Measure B</p>
<p>13 24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p>16 <u>Supporting Evidence:</u></p> <p>17 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	<p>Undisputed</p>
<p>24 25. Former San José Charter Section 78b stated:</p> <p>25 "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the</p>	<p>Disputed as incomplete (material terms missing):</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including “Argument in Favor of Proposition A”). 	<p><i>families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>”</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including “Argument in Favor of Proposition A”).
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: “Duty to Provide Retirement System.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added.)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter) (emphasis added).

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	<p>Undisputed</p>
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Undisputed (although this is not the entirety of Section 602)</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>33. Municipal Code §3.28.385(C) provides:</p> <p>"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides:</p> <p>"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI),</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy financial situation of the City. At the time,</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>--Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Decl, ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association.</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

1 **Issue 4C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1511-A is not a violation of
4 promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The
5 Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no right to
6 continuation of or payments from the SRBR.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	9 Opposing Party's Response and 10 Supporting Evidence
11 42. Section 1511-A ("Supplemental 12 Payments to Retirees") of Measure B 13 states: 14 The Supplemental Retiree Benefit 15 Reserve ("SRBR" shall be discontinued, 16 and the assets returned to the appropriate 17 retirement trust fund. Any supplemental 18 payments to retirees in addition to the 19 benefits authorized herein shall not be 20 funded from plan assets. 21 22 <u>Supporting Evidence:</u> 23 • RJN, Exh. B.	Undisputed
24 43. On or around April 12, 1960, the voters 25 ratified Proposition A, which amended 26 the San José Charter to include Section 27 78b. 28 29 <u>Supporting Evidence:</u> 30 • RJN, Exh. E (California 31 Assembly Concurrent 32 Resolution No. 17, adopted in 33 Assembly January 18, 1961, 34 approving amendment of 35 Charter of San José to include 36 Section 78b ("Discretionary 37 Powers of Council Respecting 38 Retirement") of Article X).	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>44. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing):</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment -- Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment -- Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter). 	<p>employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	<p>Undisputed</p>
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Undisputed (although this is not the entirety of Section 602)</p>
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>51. The City Council has enacted some ordinances implementing Measure B.</p>	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the</p>	<p>Objection: irrelevant and unduly prejudicial</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>methodology by the City Council, the Board shall make distributions in accordance with such methodology”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objections to evidence 24</p>
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved “The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that “there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ...” (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City’s two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: 	<p>Undisputed as to Federated City Employees’ Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]</p>	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>Undisputed as to Federated City Employees' Retirement System</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

1 CITY OF SAN JOSÉ 'S CROSS-COMPLAINT FOR DECLARATORY RELIEF.

2 5. Impairment of Contract, United States Constitution, Article I, Section 10.

3 City's first cause of action

4 Issue 5A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There are triable issues of material facts. Therefore, Defendants are not entitled to
6 summary adjudication as a matter of law.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9 1. Section 1506-A ("Current Employees") of Measure B states: 10 (a) "Current Employees" means employees 11 of the City of San José as of the 12 effective date of this Act and who are 13 not covered under the Tier 2 Plan (Section 8). 14 (b) Unless they voluntarily opt in to the 15 Voluntary Election Program ("VEP," described herein), Current Employees 16 shall have their compensation adjusted through additional retirement 17 contributions in increments of 4% of pensionable pay per year, up to a 18 maximum of 16%, but not more than 50% of the costs to amortize any pension 19 unfunded liabilities, except for any pension unfunded liabilities that may 20 exist due to Tier 2 benefits in the future. These contributions shall be in addition 21 to employees' normal pension contributions and contributions towards 22 retiree healthcare benefits. 23 (c) The starting date for an employee's compensation adjustment under this 24 Section shall be June 23, 2013, 25 regardless of whether the VEP has been implemented. If the VEP has not been 26 implemented or any reason, the compensation adjustments shall apply to 27 all Current Employees. 28 (d) The compensation adjustment through	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing):</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers</p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	<p>systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Undisputed (although this is not the entirety of section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶17, 18, Exhs. 3-6. 	<p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	<ul style="list-style-type: none"> Allen Dec., ¶15
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶28, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the San Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none"> • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> • Effective September 18, 2011, CEO members realized a 12.16% wage reduction • Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN, Exh. F

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">RJN, Exh. D, (Municipal Code, Chapter 3.36).	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

1 **Issue 5B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material 5 Facts and Supporting Evidence	6 Opposing Party's Response and 7 Supporting Evidence
8 23. San José Charter Section 1512-A states: 9 "Existing and new employees must 10 contribute a minimum of 50% of the cost 11 of retiree healthcare, including both 12 normal cost and unfunded liabilities." 13 14 <u>Supporting Evidence:</u> 15 <ul style="list-style-type: none">16 • RJN, Exh. B.	17 Undisputed 18 Note: this section was added by Measure B
19 24. On or around April 12, 1960, the voters 20 ratified Proposition A, which amended 21 the San José Charter to include Section 22 78b. 23 24 <u>Supporting Evidence:</u> 25 <ul style="list-style-type: none">26 • RJN, Exh. E (California 27 Assembly Concurrent 28 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	29 Undisputed
30 25. Former San José Charter Section 78b 31 stated: 32 "Anything in Section 78a of the Charter 33 to the contrary notwithstanding, the 34 Council in its discretion may at any 35 time, or from time to time, by ordinance, 36 amend or otherwise change the	37 Disputed as incomplete (material terms missing): 38 "Anything in Section 78a of the Charter to 39 the contrary notwithstanding, the Council in 40 its discretion may at any time, or from time 41 to time, by ordinance, amend or otherwise 42 change the retirement plan established by

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	Undisputed
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43).</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy financial situation of the City. At the time, AFSCME was unaware of the approximately 20% reduction in staffing and</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>--Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three.The Municipal Code</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

1 **Issue 5C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material	Opposing Party's Response and
5 Facts and Supporting Evidence	Supporting Evidence
6 42. Section 1511-A ("Supplemental 7 Payments to Retirees") of Measure B 8 states: 9 The Supplemental Retiree Benefit 10 Reserve ("SRBR" shall be discontinued, 11 and the assets returned to the appropriate 12 retirement trust fund. Any supplemental 13 payments to retirees in addition to the 14 benefits authorized herein shall not be 15 funded from plan assets. 16 17 <u>Supporting Evidence:</u> 18 19 • RJN, Exh. B.	Undisputed
20 43. On or around April 12, 1960, the voters 21 ratified Proposition A, which amended 22 the San José Charter to include Section 23 78b. 24 25 <u>Supporting Evidence:</u> 26 27 • RJN, Exh. E (California 28 Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
44. Former San José Charter Section 78b stated: "Anything in Section 78a of the Charter to the contrary notwithstanding, the	Disputed as incomplete (material terms missing): "Anything in Section 78a of the Charter to

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council</i></p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Emphasis added) <u>Supporting Evidence:</u> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exh. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p>	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement 	<p>Undisputed as to Federated City Employees' Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]</p>	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>Undisputed as to Federated City Employees' Retirement System</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

1 6. Unconstitutional Taking Of Private Property, United States Constitution, 5th
2 And 14th Amendments.

3 City's second cause of action

4 Issue 6A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There are triable issues of material facts. Therefore, Defendants are not entitled to
6 summary adjudication as a matter of law.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9 1. Section 1506-A ("Current Employees") of Measure B states: 10 (a) "Current Employees" means employees of the City of San José as of the 11 effective date of this Act and who are 12 not covered under the Tier 2 Plan (Section 8). 13 (b) Unless they voluntarily opt in to the 14 Voluntary Election Program ("VEP," 15 described herein), Current Employees 16 shall have their compensation adjusted 17 through additional retirement 18 contributions in increments of 4% of 19 pensionable pay per year, up to a 20 maximum of 16%, but not more than 21 50% of the costs to amortize any pension 22 unfunded liabilities, except for any 23 pension unfunded liabilities that may 24 exist due to Tier 2 benefits in the future. 25 These contributions shall be in addition 26 to employees' normal pension 27 contributions and contributions towards 28 retiree healthcare benefits. (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees. (d) The compensation adjustment through	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	Undisputed

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing). In relevant part, the section read:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE</p>	<p>Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says:</p> <p>The ballot argument in favor of Proposition A</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adapt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers</p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p>	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems.</i> However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	<p>systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	<p>Undisputed</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Undisputed (although this is not the entirety of section 602)</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<p>Disputed: as is relevant to AFSMCE's case, the City Council only amended the Municipal Code by way of ordinance to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶17, 18, Exhs. 3-6. 	<p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> Allen Dec., ¶15
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p>

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
2	<p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>--Association of Legal Professionals (ALP).</p> <p>--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	<ul style="list-style-type: none"> • Allen Dec., ¶15
10	<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14
28	<p style="text-align: center;">159</p> <p style="text-align: right;">CASE NO. 1-12-CV-225926</p> <p style="text-align: center;">SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh. 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh. 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none"> • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> • Effective September 18, 2011, CEO members realized a 12.16% wage reduction • Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN, Exh. F

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

1 **Issue 6B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material	5 Opposing Party's Response and
6 Facts and Supporting Evidence	7 Supporting Evidence
8 23. San José Charter Section 1512-A states: 9 "Existing and new employees must 10 contribute a minimum of 50% of the cost 11 of retiree healthcare, including both 12 normal cost and unfunded liabilities." 13 14 <u>Supporting Evidence:</u> 15 16 • RJN, Exh. B.	17 Undisputed 18 Note: this section was added by Measure B
19 24. On or around April 12, 1960, the voters 20 ratified Proposition A, which amended 21 the San José Charter to include Section 22 78b. 23 24 <u>Supporting Evidence:</u> 25 26 • RJN, Exh. E (California 27 Assembly Concurrent 28 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
25 25. Former San José Charter Section 78b 26 stated: 27 "Anything in Section 78a of the Charter 28 to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the	Disputed as incomplete (material terms missing): "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p>	<p>Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	<ul style="list-style-type: none"> Gurza Dec., Exhs. 54 Allen Dec., ¶21
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>financial situation of the City. At the time, AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association.</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and unduc prejudice</p> <p>Objections to Evidence 20, 21</p>

1 **Issue 6C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve) Causes**
2 **of Action**

3 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
4 adjudication as a matter of law.

5 Moving Party's Undisputed Material	Opposing Party's Response and
6 Facts and Supporting Evidence	Supporting Evidence
7 42. Section 1511-A ("Supplemental 8 Payments to Retirees") of Measure B 9 states: 10 The Supplemental Retiree Benefit 11 Reserve ("SRBR" shall be discontinued, 12 and the assets returned to the appropriate 13 retirement trust fund. Any supplemental 14 payments to retirees in addition to the 15 benefits authorized herein shall not be 16 funded from plan assets. 17 18 <u>Supporting Evidence:</u> 19 20 • RJN, Exh. B.	Undisputed
21 43. On or around April 12, 1960, the voters 22 ratified Proposition A, which amended 23 the San José Charter to include Section 24 78b. 25 26 <u>Supporting Evidence:</u> 27 28 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	Undisputed
44. Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing):

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p data-bbox="365 394 862 947">"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p data-bbox="365 1010 649 1045"><u>Supporting Evidence:</u></p> <ul data-bbox="418 1062 846 1367" style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p data-bbox="964 394 1495 1052">"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p data-bbox="906 1066 1495 1272">(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p data-bbox="906 1287 1133 1323">(Emphasis added.)</p> <p data-bbox="971 1388 1252 1423"><u>Supporting Evidence:</u></p> <ul data-bbox="964 1440 1495 1671" style="list-style-type: none"> • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p data-bbox="305 1692 748 1759">45. The ballot argument in favor of Proposition A stated:</p> <p data-bbox="358 1776 854 1906">"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	<p data-bbox="906 1692 1187 1728">Disputed as incomplete</p> <p data-bbox="906 1791 1458 1860">The ballot argument in favor of Proposition A also says:</p> <p data-bbox="906 1875 1382 1906">"YOUR POLICE AN FIREMEN NEED</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all</p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter,</i> for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems.</i> However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems,</i> and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	provisions of this Section. (Emphasis added) <u>Supporting Evidence:</u> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council." <u>Supporting Evidence:</u> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance." <u>Supporting Evidence:</u> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City." <u>Supporting Evidence:</u> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
51. The City Council has enacted some ordinances implementing Measure B. <u>Supporting Evidence:</u> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 	Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR. <u>Supporting Evidence:</u> <ul style="list-style-type: none"> Gurza Dec., Exhs. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p>	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>N Objection: irrelevant and unduly prejudicial Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement 	<p>Undisputed as to Federated City Employees' Retirement System</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]</p>	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>Undisputed as to Federated City Employees' Retirement System</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>Undisputed as to Federated City Employees' Retirement System</p>

1 7. **Unconstitutional Violation Of Due Process, United States Constitution, 5th And**
2 **14th Amendments.**

3 City third cause of action

4 **Issue 7A: San José Charter §1506-A (Employee Additional Pension Contributions)**

5 There are triable issues of material facts. Therefore, Defendants are not entitled to
6 summary adjudication as a matter of law.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	9 Opposing Party's Response and 10 Supporting Evidence
11 1. Section 1506-A ("Current Employees") 12 of Measure B states: 13 (a) "Current Employees" means employees 14 of the City of San José as of the 15 effective date of this Act and who are 16 not covered under the Tier 2 Plan 17 (Section 8). 18 (b) Unless they voluntarily opt in to the 19 Voluntary Election Program ("VEP," 20 described herein), Current Employees 21 shall have their compensation adjusted 22 through additional retirement 23 contributions in increments of 4% of 24 pensionable pay per year, up to a 25 maximum of 16%, but not more than 26 50% of the costs to amortize any pension 27 unfunded liabilities, except for any 28 pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits. (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees. (d) The compensation adjustment through	Undisputed

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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3	additional employee contributions for	
4	Current Employees shall be calculated	
5	separately for employees in the Police	
6	and Fire Department Retirement Plan	
7	and employees in the Federated City	
8	Employees' Retirement System.	
9	(e) The compensation adjustment shall be	
10	treated in the same manner as any other	
11	employee contributions. Accordingly,	
12	the voters intend these additional	
13	payments to be made on a pre-tax basis	
14	through payroll deductions pursuant to	
15	applicable Internal Revenue Code	
16	Sections. The additional contributions	
17	shall be subject to withdrawal, return	
18	and redeposit in the same manner as any	
19	other employee contributions.	
20	<u>Supporting Evidence:</u>	
21	<ul style="list-style-type: none"> Defendant's Request for 	
22	Judicial Notice ("RJN"), Exh.	
23	B, pp. 4-5 ("Measure B").	
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1	2. On or around April 12, 1960, the voters	Undisputed
2	ratified Proposition A, which amended	
3	the San José Charter to include Section	
4	78b.	
5	<u>Supporting Evidence:</u>	
6	<ul style="list-style-type: none"> RJN, Exh. E (California 	
7	Assembly Concurrent	
8	Resolution No. 17, adopted in	
9	Assembly January 18, 1961,	
10	approving amendment of	
11	Charter of San José to include	
12	Section 78b ("Discretionary	
13	Powers of Council Respecting	
14	Retirement") of Article X).	
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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>Disputed as incomplete (material terms missing). In relevant part, the section read:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good</p>	<p>Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other</i></p>	<p>Undisputed;</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Emphasis added) <u>Supporting Evidence:</u> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of section 602)
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶17, 18, Exhs. 3-6. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 2-5 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
13. For the period 2010-2011, the following	Objection: relevance and undue prejudice

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<ul style="list-style-type: none"> • Objections to Evidence 11, 12 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>--Association of Legal Professionals (ALP).</p> <p>--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 13 <p><u>Additional Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶27, Exh. 11. 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 14
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the</p>	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 14
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; 	<p>Objection: relevance and undue prejudice</p> <ul style="list-style-type: none"> • Objections to Evidence 11, 16

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 26, Exhs. 20, 28 	<p>Undisputed, but for clarification purposes:</p> <ul style="list-style-type: none"> Effective September 18, 2011, CEO members realized a 12.16% wage reduction Effective June 26, 2011, MEF members realized a 12.01% wage reduction <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 20, 28
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. C, (Municipal Code, Chapter 3.28). 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around June 2010 and became effective July 2010</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> AFSCME RJN, Exh. F
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>recognized bargaining unit." (Municipal Code 3.36.1525(A).)</p> <ul style="list-style-type: none">• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue 7B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material 5 Facts and Supporting Evidence	6 Opposing Party's Response and 7 Supporting Evidence
8 23. San José Charter Section 1512-A states: 9 "Existing and new employees must 10 contribute a minimum of 50% of the cost 11 of retiree healthcare, including both 12 normal cost and unfunded liabilities." 13 14 <u>Supporting Evidence:</u> 15 <ul style="list-style-type: none">16 • RJN, Exh. B.	17 Undisputed 18 Note: this section was added by Measure B
19 24. On or around April 12, 1960, the voters 20 ratified Proposition A, which amended 21 the San José Charter to include Section 22 78b. 23 24 <u>Supporting Evidence:</u> 25 <ul style="list-style-type: none">26 • RJN, Exh. E (California 27 Assembly Concurrent 28 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	29 Undisputed
30 25. Former San José Charter Section 78b 31 stated: 32 "Anything in Section 78a of the Charter 33 to the contrary notwithstanding, the 34 Council in its discretion may at any 35 time, or from time to time, by ordinance, 36 amend or otherwise change the	37 Disputed as incomplete (material terms missing): 38 39 "Anything in Section 78a of the Charter to 40 the contrary notwithstanding, the Council in 41 its discretion may at any time, or from time 42 to time, by ordinance, amend or otherwise 43 change the retirement plan established by

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's</i></p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A"). 	<p><i>families</i>. San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or</i></p>	<p>Undisputed</p> <p>However, Title of Section 1500 reads: "Duty to Provide Retirement System."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p> <p>(Emphasis added)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. G (1965 Charter)

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	<p>Undisputed</p>
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Undisputed (although this is not the entirety of Section 602)</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	<p>Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 54 • Allen Dec., ¶21

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Ordinances).	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Undisputed</p> <p>Note: this section was added to the Municipal Code around May 2011</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • AFSCME RJN G
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 24</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	<p>Undisputed</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and</p>	<p>Disputed</p> <p>When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy financial situation of the City. At the time, AFSCME was unaware of the</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	<p>approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the agreement, if they ever were.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Allen Decl. ¶17; Doonan Decl. ¶ 78.
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of</p>	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 18</p> <p>Disputed: City's cited sourced do not support its statement</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 19</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p>	<p>Undisputed</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 22, 23</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>Objection: relevance and undue prejudice</p> <p>Objections to Evidence 20, 21</p>

1 **Issue 7C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There are triable issues of material fact. Therefore, Defendants are not entitled to summary
3 adjudication as a matter of law.

4 Moving Party's Undisputed Material 5 Facts and Supporting Evidence	6 Opposing Party's Response and 7 Supporting Evidence
8 42. Section 1511-A ("Supplemental 9 Payments to Retirees") of Measure B 10 states: 11 The Supplemental Retiree Benefit 12 Reserve ("SRBR" shall be discontinued, 13 and the assets returned to the appropriate 14 retirement trust fund. Any supplemental 15 payments to retirees in addition to the 16 benefits authorized herein shall not be 17 funded from plan assets. 18 19 <u>Supporting Evidence:</u> 20 • RJN, Exh. B.	21 Undisputed
22 43. On or around April 12, 1960, the voters 23 ratified Proposition A, which amended 24 the San José Charter to include Section 25 78b. 26 27 <u>Supporting Evidence:</u> 28 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	29 Undisputed
30 44. Former San José Charter Section 78b 31 stated: 32 "Anything in Section 78a of the Charter 33 to the contrary notwithstanding, the	34 Disputed as incomplete (material terms missing): 35 "Anything in Section 78a of the Charter to

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	<p>the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans <i>in excess of</i> those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:</p> <p>(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a...."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allnw the City Council to be responsible for investigating problems and deciding how to solve</p>	<p>Disputed as incomplete</p> <p>The ballot argument in favor of Proposition A also says:</p> <p>"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the</p>

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<p>them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	<p>members of your police and fire departments. <i>The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families.</i> San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.</p> <p>SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter.</i> In other words, this amendment merely unties the hands of your City Council.</p> <p>NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!</p> <p>One reason is that the City Council should have broad powers to investigate and decide on matters just like this. <i>A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.</i>"</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council</i></p>	<p>Undisputed</p>

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<p><i>may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	<p>Disputed as incomplete</p> <p>* The Title of Section 1503 is: "<i>Continuance of Existing Retirement Systems</i>" (Emphasis added)</p> <p>* It reads, in its entirety:</p> <p><i>Any and all retirement system or systems, existing upon adoption of this Charter</i>, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. <i>The foregoing provisions of this Section</i> shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City <i>at the time of adoption or amendment of any such retirement system or systems</i>. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend <i>any such retirement system or systems</i>, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</p>

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	(Emphasis added) <u>Supporting Evidence:</u> <ul style="list-style-type: none"> City's RJN, Exh. G (1965 Charter)
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A. 	Undisputed
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Undisputed (although this is not the entirety of Section 602)
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. A 	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl, Exhs. 54, 55 	<p>Disputed: as is relevant to AFSMCE's case, the City Council has only amended the Municipal Code to remove the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 54

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(Federated, Police and Fire Ordinances).	<ul style="list-style-type: none"> • Allen Dec., ¶21
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	<p>Disputed as incomplete</p> <p>Full text:</p> <p>"Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, <i>survivors of members, and survivors of retired members</i>. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p>(Emphasis added.)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • City's RJN, Exh. C
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	<p>Disputed: cited sources only demonstrate suspended distributions in fiscal years 2010-2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p>	<p>Objection: irrelevant and unduly prejudicial</p> <p>Objections to evidence 24</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moncys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 25</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	<p>Objection: irrelevant and unduly prejudicial Objections to evidence 24</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement 	<p>Undisputed as to Federated City Employees' Retirement System</p>

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Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	Undisputed as to Federated City Employees' Retirement System
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	Undisputed as to Federated City Employees' Retirement System

Dated: April 30, 2013

BEESON, TAYER & BODINE, APC

By: 

VISHTASP M. SOROUSHIAN

Attorneys for AFSCME LOCAL 101

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